

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007 IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 10th day of March, two thousand eight.

PRESENT:

HON. DENNIS JACOBS,
Chief Judge,
HON. JOSÉ A. CABRANES,
HON. CHESTER J. STRAUB,
Circuit Judges.

ZHEN YU CHEN,
Petitioner,

v.

MICHAEL B. MUKASEY, ATTORNEY GENERAL,¹
Respondent.

07-1280-ag (L) ;
07-1517-ag (con)
NAC

FOR PETITIONER: David Yan, Flushing, New York.

¹Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Michael B. Mukasey is automatically substituted for former Attorney General Alberto R. Gonzales as the respondent in this case.

1 **FOR RESPONDENT:** **Jeffrey S. Bucholtz, Acting**
2 **Assistant Attorney General, Michelle**
3 **Gorden Latour, Assistant Director,**
4 **Jessica E. Sherman, Trial Attorney,**
5 **United States Department of Justice,**
6 **Civil Division, Office of**
7 **Immigration Litigation, Washington,**
8 **District of Columbia.**
9

10 UPON DUE CONSIDERATION of this petition for review of a
11 decision of the Board of Immigration Appeals ("BIA"), it is
12 hereby ORDERED, ADJUDGED, AND DECREED, that the petition for
13 review is DENIED.

14 Petitioner Zhen Yu Chen, a native and citizen of the
15 People's Republic of China, seeks review of the March 12,
16 2007 order of the BIA affirming the August 26, 2005 decision
17 of Immigration Judge ("IJ") Adam Opaciuch, denying his
18 application for asylum, withholding of removal, and relief
19 under the Convention Against Torture ("CAT"). *In re Zhen Yu*
20 *Chen*, No. A78 387 919 (B.I.A. Mar. 12, 2007), *aff'g* No. A78
21 387 919 (Immig. Ct. N.Y. City Aug. 26, 2005). We assume the
22 parties' familiarity with the underlying facts and
23 procedural history of the case.

24 When the BIA issues an opinion that fully adopts the
25 IJ's decision and merely supplements it, we review the IJ's
26 decision as supplemented by the BIA. See *Yan Chen v.*
27 *Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). We review *de*
28 *novo* questions of law and the application of law to

1 undisputed fact. See *Secaida-Rosales v. INS*, 331 F.3d 297,
2 307 (2d Cir. 2003). We review the agency's factual findings
3 under the substantial evidence standard. Furthermore, we
4 treat these findings as "conclusive unless any reasonable
5 adjudicator would be compelled to conclude to the contrary."
6 8 U.S.C. § 1252(b)(4)(B); see *Dong Gao v. BIA*, 482 F.3d 122,
7 126 (2d Cir. 2007).

8 As a preliminary matter, because Chen failed to raise
9 before the BIA his argument that the IJ erred by failing to
10 administratively close his case, and because the government
11 has raised this failure to exhaust in its brief to this
12 Court, we decline to consider the issue. *Lin Zhong v. U.S.*
13 *Dep't of Justice*, 480 F.3d 104, 119-20, 124 (2d Cir. 2007).

14 We find no error in the agency's decision to deny
15 Chen's asylum application. The agency properly concluded
16 that Chen failed to establish past persecution where his
17 claim relied solely on his mother's forced IUD insertion.
18 See *Tao Jiang v. Gonzales*, 500 F.3d 137, 141 (2d Cir. 2007)
19 (citing *Shi Liang Lin v. U.S. Dep't of Justice*, 494 F.3d
20 296, 308-09 (2d Cir. 2007) (en banc)); see also *Shao Yan*
21 *Chen v. U.S. Dep't of Justice*, 417 F.3d 303, 305 (2d Cir.
22 2005) (per curiam). Similarly, the agency properly found
23 that Chen could not demonstrate a well-founded fear of
24 persecution based on the possibility that his parents may be

1 subjected to sterilization on account of the birth of his
2 United States citizen sister. See *Tao Jiang*, 500 F.3d at
3 141; *Shao Yan Chen*, 417 F.3d at 305.

4 In addition, while it is true that the imposition of an
5 exorbitant fine could constitute a “severe economic
6 disadvantage” amounting to persecution, *Matter of T-Z-*, 24
7 I. & N. Dec. 163, 173 (B.I.A. 2007), Chen points to no
8 specific evidence in the record that Chinese authorities
9 would seek to fine his parents, much less that the amount of
10 the fine would result in Chen himself (as opposed to his
11 parents, see *Tao Jiang*, 500 F.3d at 141) suffering a severe
12 economic disadvantage rising to the level of persecution.
13 See also *Guan Shan Liao v. U.S. Dep’t of Justice*, 293 F.3d
14 61, 70 (2d Cir. 2002). Similarly, Chen points to no
15 evidence that Chinese authorities would seek to deprive him
16 of educational opportunities or that any potential
17 deprivation of education would be so severe as to amount to
18 persecution. Cf. *Matter of T-Z-*, 24 I. & N. Dec. at 174-75.

19
20 Regarding Chen’s asylum claim based on his illegal
21 departure from China, we agree with the agency that he
22 failed to identify any record evidence that Chinese
23 authorities will impute to him any kind of political opinion
24 for departing the country without prior authorization. See

1 *Yueqing Zhang v. Gonzales*, 426 F.3d 540, 545 (2d Cir. 2005);
2 see also *Qun Yang v. McElroy*, 277 F.3d 158, 163 n.5 (2d Cir.
3 2002) (per curiam).

4 As Chen was unable to show the objective likelihood of
5 persecution needed to make out an asylum claim, he was
6 necessarily unable to meet the higher standard required to
7 succeed on a claim for withholding of removal. See *Paul v.*
8 *Gonzales*, 444 F.3d 148, 156 (2d Cir. 2006).

9 Regarding his CAT claim based on his illegal departure
10 from China, Chen points to no record evidence that someone
11 in his particular circumstances would more likely than not
12 be subjected to torture. See *Mu Xiang Lin v. U.S. Dep't of*
13 *Justice*, 432 F.3d 156, 159-60 (2d Cir. 2005). Accordingly,
14 the agency's denial of CAT relief was not improper.

15 For the foregoing reasons, the petition for review is
16 DENIED. As we have completed our review, the pending motion
17 for a stay of removal in this petition is DISMISSED as moot.

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20 FOR THE COURT:
21 Catherine O'Hagan Wolfe, Clerk
22
23
24

By: _____